

## PROBATE

Friday, November 1, 2019



In order to inherit the estate of a deceased person who dies with a valid Will, the heirs need to go through a process named probate.

### **Who should apply for the grant of probate?**

The executor of the Will.

### **How long does the grant of probate take?**

Depending on the size of the estate, the process may take from 3 – 4 months.

### **What are the documents required for the application of the grant of probate?**

The original Will, death certificate, executor's IC and the list of assets & liabilities related document.

### **What if the executor fails to carry out their duties?**

A petition may be filed against the executor to demand a complete accounting of the estate's assets or to remove the executor.

## **Can the executor renounce form his/her position?**

An unwilling individual is free to renounce his/her position as the executor of the deceased's estate. Once the application is granted the executor will then be devolved and it will be deemed as if the testator had never appointed an executor. Such an application can either be done orally or in writing by the executor. As such, it is important to appoint at least one substitute executor in a Will.

## **The steps in applying for the grant of probate.**

To get started, the executor must first extract the original death certificate of the deceased from the Registration Department of Births and Death. The executor then need to locate the Will and refer to a lawyer to apply for probate. At the same time, the executor is required to prepare a list of assets and liabilities of the deceased, list of beneficiaries and all the related documents for probate petition purposes.

The checklist for the petition process is as follows:

- Fill in Form 168 according to the Rules of High Court
- Executor to verify by oath
- Certified true copy of Will
- Affidavit from the attesting witnesses
- If the Will is not written in English/ Bahasa Malaysia, it will require an interpretation of Will.
- If the executor applies for the grant of probate after 3 years of the death of the executor, an affidavit for such delay must be attached.

Once the probate has been granted and extracted, the executor is liable to collect all the deceased's assets settle all the deceased's debts and liabilities including his/her income tax. Upon settlement of the deceased's debts and liabilities, the remaining estate shall be distributed to the beneficiaries according to the deceased's final wishes stated in the Will.